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09/802,088	03/08/2001	Christopher Keith	IVEN125469	4943

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EXAMINER
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BORLINGHAUS, JASON M

ART UNIT	PAPER NUMBER
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3693

MAIL DATE	DELIVERY MODE
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07/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/802,088

Applicant(s)

KEITH, CHRISTOPHER

Examiner

Jason M. Borlinghaus

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/12/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

**Claims 7, 11, 13, 15, 18 and 19** are objected to because of the following informalities: lack of antecedent basis. Claims state "the option" rather than "the short term option" as stated in earlier claims. Examiner assumes that "the short term option" is being referenced by such claim language.

**Claim 26** is objected to because of the following informalities: improper spelling or grammar. Claim 26 states "multiple trading process that are simultaneously." Examiner assumes that Applicant intends to state "multiple trading processes that are simultaneously."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 7 – 16 and 18 - 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hull (Hull, John C. *Introduction to Futures & Options Markets*. 2<sup>nd</sup> Edition. Prentice-Hall. 1995. pp. 4 – 6, 11, 26, 33 – 34 and 188 - 190) in view of Disclosed Prior Art (specification, p. 27, lines 1 - 6) and Options (The Options Institute. *Options: Essential Concepts & Trading Strategies*. 3<sup>rd</sup> Edition. McGraw-Hill. 1999. p. 420).

**Regarding Claim 7 – 12 and 24 - 26**, Hull discloses a method comprising:

- receiving a short term option request from a user (investor). (see p. 4);
- requesting the short term option from a market process (floor broker). (see p. 4);
- the market process being a computer program (automated trading system) executing on a computer system (automated trading system) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders). (see p. 33);
- wherein the short term option request is received (by broker) as a result of user (investor) trading activity (request). (see p. 4);
- selecting one of a plurality of market processes (exchanges) from which to request the short term option. (see pp. 5 - 6; p. 11);
- receiving notice from the market process (floor broker) that the short term option was granted. (see p. 4);

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- further comprising forwarding the notice that the short term option was granted to the user. (see p. 4);
- wherein the steps of automatically receiving (willingness to sell) and requesting (willingness to buy) are performed by a trading process (system), the trading process (system) being a computer program configured to act as an agent (buyer/seller computer terminal logged into the system) that, when executed, represents an order (willingness to buy/sell) from the user and interacts with the market process (system) according to the rules of engagement (matching/system rules). (see p. 33);
- wherein the short term option request is received as a result of processing a linked order (spreads, combinations, straddles and strangles). (p.190); and
- wherein the receiving and requesting are performed by multiple trading processes (brokers) that are simultaneously and independently representing multiple orders from the user. (see p. 4; p. 33);

Hull does not explicitly teach a method wherein said activities are performed automatically, without explicit requests from the user; wherein a short term option is an option being about ten seconds or less measured from when the option is granted; nor wherein a short option is an option being about one second or less measured from when the option is granted. Although Hull does disclose the user of automated trading systems, without explicit requests from the user (see p. 33) and the trading of financial

- wherein the short term option request indicates a desired resource (options' underlying assets), and further comprising automatically reserving the desired resource (funds in margin account to cover the value of options' underlying assets) until the expiration time of the option. (see p. 188);
- releasing the reserved resource (funds in margin account) at the expiration of the option when the option has not been exercised (option has not been exercised). (see p. 189);
- wherein the option request indicates a price for the desired resource (options' underlying assets' value), and further comprising receiving an instruction to exercise the short term option (stop order/stop-loss order). (see p. 34);
- pairing the reserved resource (margin funds) at the price in the request in response to the exercise instruction. (see p. 34; p. 26);
- wherein the exercise instruction (stop order) is received from a trading process (trader) (see p. 4);
- wherein the exercise instruction (stop order) is received from a platform process (computer terminal). (see p. 33);
- wherein receiving and granting is performed by a market process (floor brokers). (supra – see p. 4)

- wherein the short term option request is received as a result of processing a linked order (spreads, combinations, straddles and strangles). (p.190); and
- wherein the receiving and requesting are performed by multiple trading processes (brokers) that are simultaneously and independently representing multiple orders from the user. (see p. 4; p. 33);

Hull does not explicitly teach a method wherein said activities are performed automatically, without explicit requests from the user; wherein a short term option is an option being about ten seconds or less measured from when the option is granted; nor wherein a short option is an option being about one second or less measured from when the option is granted. Although Hull does disclose the user of automated trading systems, without explicit requests from the user (see p. 33) and the trading of financial instruments by scalpers based upon "very short term trends", usually only "hold[ing] their positions for a few minutes." (see p. 34).

Disclosed Prior Art discloses a method comprising:

- receiving, at a computer program (automated facility) executing on a computer system (automated facility) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders), a request for an option. (see p. 26, line 31 – p. 27, line 2); and
- receiving and granting short term option request. (see p. 27, lines 2 - 6);

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expiration time, as disclosed by Disclosed Prior Art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull and Disclosed Prior to allow for the negotiation of any option term that the inventor desired. *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975). Furthermore, as there are traders that hold positions of financial instruments of approximately 10 seconds, as disclosed by Options, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Disclosed Prior Art and Hull by incorporating the ability for short term option expiration time to be measured as approximately ten seconds, as financial instruments are already traded over such short durations.

**Regarding Claims 13 – 16, 18 – 23 and 27 - 29**, Hull discloses a method comprising:

- receiving, at a computer program (automated trading system) executing on a computer system (automated trading system) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders), a request for a financial instrument (future). (see p. 33);
- receiving, a request for a short term option. (see p. 4);
- wherein the short term option request is received from a trading process (broker). (see p. 4);
- wherein the request includes the term of the short term option. (see p. 4);



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instruments by scalpers based upon “very short term trends”, usually only “hold[ing] their positions for a few minutes.” (see p. 34).

Disclosed Prior Art discloses a method comprising:

- receiving a short term option request from a user. (see p. 27, lines 1 - 6);
- wherein a short term option is an option being about tens of seconds measured from when the option is granted. (see p. 27, lines 1 - 6); and
- the market process being a computer program (automated facility) executing on a computer system (automated facility) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders). (see p. 26, line 31 – p. 27, line 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have automated Hull, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *Dann v. Johnston*, 425 US 219, 227-30, 189 USPQ 257, 261 (1976); *In re Venner*, 120 USPQ 192 (CCPA 1958).

Neither Hull nor Disclosed Prior Art teach a short term option request for a short term option being about ten seconds or less, nor a short term option being about one second or less. However, Disclosed Prior Art does disclose the ability “to negotiate the expiration time.” (see p. 27, line 2). Furthermore, Options discloses that that some traders in financial instruments, termed scalpers, hold positions for extremely short time durations, “usually 10 seconds to 3 minutes. (see p. 420). As parties can negotiate the

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- wherein a short term option is an option being about tens of seconds measured from when the option is granted. (see p. 27, lines 1 - 6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have automated Hull, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *Dann v. Johnston*, 425 US 219, 227-30, 189 USPQ 257, 261 (1976); *In re Venner*, 120 USPQ 192 (CCPA 1958).

Neither Hull nor Disclosed Prior Art teach a short term option request for a short term option being about ten seconds or less, nor a short term option being about one second or less. However, Disclosed Prior Art does disclose the ability "to negotiate the expiration time." (see p. 27, line 2). Furthermore, Options discloses that that some traders in financial instruments, termed scalpers, hold positions for extremely short time durations, "usually 10 seconds to 3 minutes. (see p. 420). As parties can negotiate the expiration time, as disclosed by Disclosed Prior Art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull and Disclosed Prior to allow for the negotiation of any option term that the inventor desired. *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975). Furthermore, as there are traders that hold positions of financial instruments of approximately 10 seconds, as disclosed by Options, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Disclosed Prior Art and Hull by incorporating the ability for short term option expiration time to be measured as

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approximately ten seconds, as financial instruments are already traded over such short durations.

**Claims 1 – 6, 17 and 30 – 48** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hull in view of Disclosed Prior Art, Options and Rosen (US Patent 5,453,601).

**Regarding Claims 1 – 6, 17 and 30**, Hull discloses a method comprising:

- receiving a request for an option expiration (exercise date/time) from a market process (floor trader). (see p. 4);
- the market process being a computer program (automated trading system) executing on a computer system (automated trading system) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders). (see p. 33);
- further comprising sending an option expiration notice to the market process (floor broker/Exchange). (see p. 4);
- wherein the request also includes identification of a trading process (requesting floor broker), and further comprising sending a short term option expiration notice to the trading process (requesting floor broker). (see p. 4);
- creating an option manager process (management system) in response to the short term option request. (see p. 190); and

- wherein requesting and offering are performed by a platform process (terminal). (see p. 4; p. 33).

Hull does not explicitly teach a method wherein said activities are performed automatically, without explicit requests from the user; wherein a short term option is an option being about ten seconds or less measured from when the option is granted; nor wherein a short option is an option being about one second or less measured from when the option is granted. Although Hull does disclose the user of automated trading systems, without explicit requests from the user (see p. 33) and the trading of financial instruments by scalpers based upon "very short term trends", usually only "hold[ing] their positions for a few minutes." (see p. 34).

Disclosed Prior Art discloses a method comprising:

- receiving, at a computer program (automated facility) executing on a computer system (automated facility) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders), a request for an option. (see p. 26, line 31 – p. 27, line 2); and
- receiving and granting short term option request. (see p. 27, lines 2 - 6);
- wherein a short term option is an option being about tens of seconds measured from when the option is granted. (see p. 27, lines 1 - 6).

Rosen discloses a method comprising:

- receiving a timer request (timer instructions) for a timer to measure the duration of a financial instrument (electronic note/certificate), wherein the

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measurement may be in seconds (see col. 16, lines 21 – 24; col. 21, lines 5 – 23); and

- in response to the timer request (timer instructions), instantiating (starting) the timer and setting the timer to indicate the financial instrument (electronic note/certificate) expiration time (expiration of validity). (see col. 16, lines 21 – 24);
- terminating the instance of the timer upon expiration of the financial instrument (electronic note/certificate). (see col. 16, lines 21 – 24); and
- resetting the timer to ensure that the financial instrument remains valid. (see col. 13, line 67 – col. 14, line 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have automated Hull, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *Dann v. Johnston*, 425 US 219, 227-30, 189 USPQ 257, 261 (1976); *In re Venner*, 120 USPQ 192 (CCPA 1958).

Neither Hull nor Disclosed Prior Art teach a short term option request for a short term option being about ten seconds or less, nor a short term option being about one second or less. However, Disclosed Prior Art does disclose the ability “to negotiate the expiration time.” (see p. 27, line 2). Furthermore, Options discloses that that some traders in financial instruments, termed scalpers, hold positions for extremely short time durations, “usually 10 seconds to 3 minutes. (see p. 420). As parties can negotiate the

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expiration time, as disclosed by Disclosed Prior Art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull and Disclosed Prior to allow for the negotiation of any option term that the inventor desired. *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975). Furthermore, as there are traders that hold positions of financial instruments of approximately 10 seconds, as disclosed by Options, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Disclosed Prior Art and Hull by incorporating the ability for short term option expiration time to be measured as approximately ten seconds, as financial instruments are already traded over such short durations.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull, Disclosed Prior Art and Options by incorporating a timer, as disclosed by Rosen, to monitor the expiration time of the short term options, as the use of automated timers is standard and/or conventional to measure time durations in automated systems. Furthermore, Hull disclosed "Some brokerage firms will automatically exercise options for their clients at expiration when it is in their clients' best interest to do so." (see p. 190). Such an automatic exercise of options would indicate some management system to monitor and administer the options at expiration time and, therefore, it would have been obvious to incorporate a conventional and/or standard technology such as a timer, as disclosed by Rosen, to further manage and ensure the automatic exercise of expired options.

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**Regarding Claims 31 – 48**, such claims recite similar limitations as claimed in previously rejected claims, would have been obvious based upon previously rejected claims, or are otherwise disclosed by the prior art applied in previously rejected claims. Such claim limitations are therefore rejected using the same art and rationale as previously utilized. Applicant is reminded that any argument contrary to such an interpretation is an indication of patentably distinct subject matter that may warrant a restriction requirement.

### ***Response to Arguments***

Applicant's arguments filed 3/12/07 with respect to pending claims have been fully considered not persuasive.

### **Short Term Options “Being About Ten Seconds or Less”**

In response to Applicant's argument that prior art references, specifically Disclosed Prior Art, fails to disclose nor suggest the claim limitation of short term options with a term of “about ten seconds or less,” Examiner respectfully disagrees.

While the Examiner has conceded in previous Office Actions that the prior art references may not explicitly disclose short term options consisting of such a time frame, Examiner does assert that the prior art references do suggest short term options consisting of such a time frame.

Disclosed Prior Art states:

Conventional options expire at one of a set of predetermined times in the future, rather than in a short time measured from when they are granted. Recently, the

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International Securities Exchange has provided an automated facility for trading these conventional options. **So-called "forwards" enable a trader to negotiate the expiration time.**

**In conventional human-directed markets, a market maker will often grant a short-term option to a trader,** sometimes for a fee and sometimes as a favor. The market maker is exposing himself or herself to arbitrage by the trader, **so is reluctant to grant such stops for more than intervals of time measured in tens of seconds.** Due to human reaction times, a stop for a duration of one second or less is useless, since a human cannot physically take another trading action in such a short time. (emphasis added, see p. 26, line 30 – p. 27, line 8).

While Applicant argues that such Disclosed Prior Art reference is “clearly discussing” conventional options of a longer time period, Disclosed Prior Art does disclose “a market maker will often grant a short-term option to a trader” (see p. 27, lines 3 – 4). Furthermore, while Disclosed Prior Art states that the market maker “**is reluctant** to grant such stops for more than intervals of time measured in tens of seconds,” the phrasing of “is reluctant” does not equate to non-existence. (emphasis added - see p. 27, lines 4 – 6). Taken in conjunction with Disclosed Prior Art’s disclosure that with “conventional options” traders are enabled “to negotiate the expiration time” (see p. 27, lines 1 –2), Examiner asserts that it would have been obvious to one of ordinary skill at the time the invention was made to have modified prior art reference(s) to account for the negotiation of any time period that the inventor desired, even for negotiation to the far end of the time measurement spectrum measured in tens of seconds.

As a secondary reference, Options discloses that options are traded among market participants with each party attempting to maintain positions with extremely short time durations, such durations being “usually 10 seconds to 3 minutes.” (see p. 420).



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When viewed in conjunction with the teachings of Disclosed Prior Art, Examiner must assert that short-term options having a term "being about ten seconds or less" would have been obvious to one of ordinary skill in the art at the time the invention was made. If "the expiration time" of "conventional options" can be negotiated, Examiner sees no reason that options cannot be negotiated to "an option term of about ten seconds or less." This assertion is buttressed by the fact that "short-term options" already exist, market makers already measure expiration times in such minute quantities as "tens of seconds" and some traders hold positions with very short time durations of "usually 10 seconds".

Applicant also distinguishes Disclosed Prior Art as such reference is directed to conventional options and conventional human-directed markets. However, Disclosed Prior Art and Hull also disclose computerized trading systems. Computers and/or computerized systems performing functions faster than human performance ability is notoriously old and well known in the art of information technology and computer science. Therefore, Examiner asserts that while a human-directed market may or may not be able to process transactions of such duration, a computerized market system, as disclosed by Disclosed Prior Art and Hull, would allow for the processing of short-term options of such duration.

Furthermore, Examiner asserts that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the option term to be as small or as large as the inventor desired, since it has been held that

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changing size without producing any new and unexpected result involves only routine skill in the art. *In re Rose*, 200 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955).

### **Automated System**

In response to Applicant's argument that prior art reference(s) fail to disclose nor suggest a method "wherein the automatically receiving and requesting are performed by a trading process, the trading process being a computer program configured to act as an agent that, when executed, represents an order from the user and interacts with the market process according to the rules of engagement," Examiner respectfully disagrees.

Hull states:

Recently, there has been a great deal of discussion of the viability of automated futures trading systems. Under an automated system, buyer and seller would be matched by a computer. A potential buyer would sit at a computer terminal and indicate the price at which he or she is willing to buy. This price would be relayed throughout the system. Another trader, also sitting at a computer terminal and logged into the system, could signal a willingness to sell at the buyer's price by pressing the appropriate keys. Some of the major North American exchanges currently use this type of system outside normal trading hours and some European exchanges use it for all trading. It is possible that all exchanges will eventually eliminate the open outcry auction. (see p. 33).

Examiner asserts that such disclosure is of a method wherein the automatically receiving and requesting (transmission/receipt of information by the automated system) are being performed by a trading process (an automated system), the trading system (automated system) being a computer program (software operating on an automated system) configured to act as an agent (for the seller/buyer by virtue of the matching) that, when executed (matched), represents an order from the user (buyer order) and

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interacts with the market process (North American exchanges) according to rules of engagement (such as after normal trading hours).

### **Multiple Trading Processes**

In response to Applicant's argument that prior art reference(s) fail to disclose nor suggest a method wherein the request "are performed by multiple trading process[es] that are simultaneously and independently representing multiple orders of the user," Examiner respectfully disagrees.

Hull states:

Recently, there has been a great deal of discussion of the viability of automated futures trading systems. Under an automated system, buyer and seller would be matched by a computer. A potential buyer would sit at a computer terminal and indicate the price at which he or she is willing to buy. This price would be relayed throughout the system. Another trader, also sitting at a computer terminal and logged into the system, could signal a willingness to sell at the buyer's price by pressing the appropriate keys. Some of the major North American exchanges currently use this type of system outside normal trading hours and some European exchanges use it for all trading. It is possible that all exchanges will eventually eliminate the open outcry auction. (see p. 33).

Examiner asserts that such disclosure is of a method (performed via an automated system) being performed by multiple trading processes (matching subroutines/subsystems) that are simultaneously and independently representing multiple orders (such as multiple orders submitted to the automated system) of the user.

### **Additional Arguments**

In response to Applicant's further arguments that prior art reference(s) fail to disclose claim limitation(s), Examiner refutes such an assertion as such definition of

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claim terminology was not articulated in the original specification nor utilized in the previously presented claim(s). As such, the broadest definition for the term was applied as to provide the "broadest reasonable interpretation consistent with the specification during the examination of a patent application since the applicant may then amend his claims." See *In re Prater and Wei*, 162 USPQ 541, 550 (CCPA 1969).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

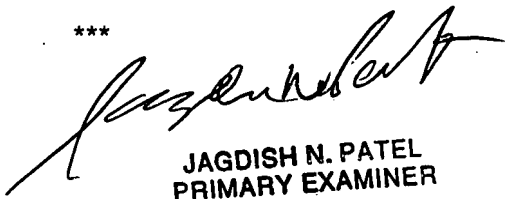
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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JAGDISH N. PATEL  
PRIMARY EXAMINER